

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

WEST COVINA UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2013090110

ORDER GRANTING MOTION TO  
DISMISS

On September 3, 2013, Student filed a due process complaint (Complaint) against West Covina Unified School District (District) and California Virtual Academies (CAVA).

OAH issued an order dismissing CAVA on January 3, 2014, finding OAH did not have jurisdiction over the claims against CAVA because all of Student's claims sought reformation of a settlement agreement in OAH case number 2013080754 (Settlement Agreement), and, to the extent Student alleged he was denied a free appropriate public education (FAPE) from 2009-2011, OAH determined it had no jurisdiction according to the terms of the Settlement Agreement, because Student waived the right to maintain any proceeding "arising from or related to Student's education program through December 22, 2011."

District filed a motion to dismiss on January 7, 2014. Student filed written response and the parties argued the matter during a prehearing conference on January 10, 2014.

For the reasons set forth below, District's motion to dismiss is granted. OAH does not have jurisdiction over the matter because: Student's Complaint seeks renegotiation and reformation of a Settlement Agreement and does not allege an issue regarding Student's identification, evaluation, or educational placement; Student's claims against District were specifically waived in the Settlement Agreement; and, having waived any prior FAPE claims, there is no remaining FAPE claim against District because Student did not live within District boundaries at any time after the time period covered by the Settlement Agreement.

APPLICABLE LAW

Parents have the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act (IDEA). (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 [hereafter *Wyner*].) In *Wyner*, during

the course of a due process hearing the parties reached a settlement agreement in which the district agreed to provide certain services. The hearing officer ordered the parties to abide by the terms of the agreement. Two years later, the student initiated another due process hearing, and raised, inter alia, six issues as to the school district's alleged failure to comply with the earlier settlement agreement. The California Special Education Hearing Office (SEHO), OAH's predecessor in hearing IDEA due process cases, found that the issues pertaining to compliance with the earlier order were beyond its jurisdiction. This ruling was upheld on appeal. The *Wyner* court held that "the proper avenue to enforce SEHO orders" was the California Department of Education's compliance complaint procedure (Cal. Code Regs., tit. 5, § 4600, et. seq.), and that "a subsequent due process hearing was not available to address . . . alleged noncompliance with the settlement agreement and SEHO order in a prior due process hearing." (*Wyner*, *supra*, 223 F.3d at p. 1030.)

More recently, in *Pedraza v. Alameda Unified Sch. Dist.* (D. Cal. 2007) 2007 U.S. Dist. LEXIS 26541 the United States District Court for the Northern District of California held that OAH has jurisdiction to adjudicate claims alleging denial of a FAPE as a result of a violation of a mediated settlement agreement, as opposed to "merely a breach" of the settlement agreement that should be addressed by the California Department of Education's compliance complaint procedure.

Settlement agreements are interpreted using the same rules that apply to interpretation of contracts. (*Vaillette v. Fireman's Fund Ins. Co.* (1993) 18 Cal.App.4th 680, 686, citing *Adams v. Johns-Manville Corp.* (9th Cir. 1989) 876 F.2d 702, 704.) "Ordinarily, the words of the document are to be given their plain meaning and understood in their common sense; the parties' expressed objective intent, not their unexpressed subjective intent, governs." (*Id.* at p. 686.) If a contract is ambiguous, i.e., susceptible to more than one interpretation, then extrinsic evidence may be used to interpret it. (*Pacific Gas & Electric Co. v. G. W. Thomas Drayage & Rigging Co.* (1968) 69 Cal.2d 33, 37-40.) Even if a contract appears to be unambiguous on its face, a party may offer relevant extrinsic evidence to demonstrate that the contract contains a latent ambiguity; however, to demonstrate an ambiguity, the contract must be "reasonably susceptible" to the interpretation offered by the party introducing extrinsic evidence. (*Dore v. Arnold Worldwide, Inc.* (2006) 39 Cal.4th 384, 391, 393.)

## DISCUSSION

Student's Complaint stated four claims: (1) Student sought to renegotiate a Settlement Agreement dated September 28, 2011, alleging that the stipulations therein were unfair and inequitable; (2) Student complained he was denied a FAPE from 2009-2011 because the amount of compensatory private tutoring services in the Settlement Agreement were insufficient to help Student meet grade level standards; (3) Student complained that his attorney and District failed to consider an independent educational evaluation in determining appropriate services provided in the Settlement Agreement; and (4) Student was forced to withdraw from CAVA and suffered loss of education in exchange for services agreed to in the Settlement Agreement.

District contends OAH does not have jurisdiction over this matter because Student's claims relate solely to the Settlement Agreement, Student waived all claims through December 22, 2011, and Student has not enrolled in District or lived in the area served by District since December 22, 2011.

Student contends Parent was "kicked out of school" without her permission, that she was forced and coerced by District and "perhaps" Student's attorney to withdraw Student from CAVA on December 22, 2011, in order to obtain a settlement offer, resolve the matter of attorney fees, and to avoid providing Student with services. Parent also contends she was not informed of her right to have an IEP meeting after an independent education evaluation. Student did not allege and does not contend District failed to implement the Settlement Agreement.

According to the Settlement Agreement, at the time the parties entered into the Settlement Agreement, Student informed District that Student intended to move to Palm Springs within "the next month." Parent states in her response to the motion to dismiss that Student "never lived within the jurisdiction and/or boundaries" of District. The Settlement Agreement resolved all claims and issues between the parties "arising from or related to Student's education program through December 22, 2011." Student waived any and all claims against both Respondents through September 28, 2011, the date the Settlement Agreement was executed, whether known or unknown by Student at the time and included a waiver of the provisions of California Civil Code section 1542. The Settlement Agreement provided for Student's placement at CAVA through December 22, 2011, unless Parent withdrew Student earlier. The parties agreed that until withdrawal, Student's March 21, 2011, IEP would be implemented and that no IEP meeting would be held to consider a then pending independent educational evaluation. The Settlement Agreement recites that the parties read the Settlement Agreement in full, voluntarily agreed to it and understood it, and that it was entered without fraud, coercion or duress.

OAH finds that all of Student's claims seek reformation of various terms of the Settlement Agreement. OAH has no jurisdiction to hear matters that seek to invalidate or rewrite the terms of the Settlement Agreement. The several waivers contained in the Settlement Agreement are clear and unambiguous, as are the recitals that the Settlement Agreement was free and voluntarily. No FAPE claim against District survives the Settlement Agreement because any claims before December 22, 2011, are waived and Student has not enrolled in District or lived within the area serviced by District since December 22, 2011.

## **ORDER**

1. District's Motion to Dismiss is granted.
2. All dates are vacated.

Dated: January 15, 2014

/s/

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MARIAN H. TULLY  
Administrative Law Judge  
Office of Administrative Hearings